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C O N F I D E N T I A L SECTION 01 OF 03 SARAJEVO 000995

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DEPARTMENT FOR EUR(DICARLO), EUR/SCE(HOH/FOOKS),
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SUBJECT: BOSNIA - CONSTITUTIONAL REFORM AND THE EUROPEANS

REF: A. MAY 7 FOOKS-MURPHY E-MAIL

[1B](#). STATE 22980

[1C](#). SARAJEVO 41

Classified By: Ambassador Douglas McElhaney. Reason 1.4(b) and (d).

[11](#). (C) SUMMARY: Christian Schwarz-Schilling, in his capacity as European Union Special Representative (EUSR), briefed Quint Ambassadors (plus the European Commission Ambassador) on the proposal to create a Constitutional Reform Commission (CRC), which would be responsible for guiding a longer-term constitutional reform process in Bosnia. All ambassadors expressed general support for the process and for a U.S.-EU partnership on "phase II" constitutional reform, but several also expressed concern that the draft concept paper provided for too great a role for the international community in the process. Several ambassadors also objected to the proposed size of the secretariat, which would provide technical and administrative support. We stressed two points. First, absent a strong guiding hand from the international community, the prospects for reaching an agreement on constitutional reform were slight. An "ownership" strategy would not produce the results the U.S. and EU wanted. Second, this process required careful political management given the current political environment in Bosnia. It did not make sense to force an agreement. In that context, we expressed concern about an EUSR and German proposal to hold a "ceremony" in mid-June announcing support for a Constitutional Reform Commission. From our perspective, it would be useful for Washington officials to underscore these messages with Schwarz-Schilling during his visit to Washington the week of May 14. END SUMMARY

EUSR Outlines Long-term Constitutional Reform Process

[12](#). (C) At a May 8 meeting Christian Schwarz-Schilling, in his capacity as EU Special Representative (EUSR), briefed UK, German, French, Italian and European Commission ambassadors on a U.S.-EU proposal to establish a longer-term process of constitutional reform regardless of what happens to the existing, U.S.-brokered package of amendments (Ref B). The EUSR said that he had been working closely with his own expert group and the U.S. for several months to develop a proposal that could be launched by a political agreement among Bosnian political party leaders. The proposal involves the creation of a Constitutional Reform Commission (CRC), which would consist of eight representatives from Bosnia's major political parties and would be supported by a

secretariat composed of international and Bosnian technical

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experts. An American, a European and a Bosnian would co-chair the CRC (Note: The Bosnian co-chair would rotate among the CRC Bosnian membership. End Note.)

Ownership vs. Guiding Hand

13. (C) The European ambassadors expressed their strong support for "the overall process of constitutional reform," but expressed concern about the scope of international involvement in the process. That said, they argued that placing an American and a European at the head of the Commission and including international experts among the secretariat staff undercut the principle of "ownership."

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European ambassadors maintained that U.S. and European "intervention" in the constitutional reform process ought to be limited, and they urged the EUSR to restructure the proposal to provide Bosnians with a greater responsibility for shaping proposed amendments and driving the associated political process. The EC Ambassador underscored that constitutional reform is not a requirement for EU accession. Ambassador replied that progress on constitutional reform, like every other major reform in Bosnia, required a strong guiding hand from the international community. That did not mean writing the constitution for the Bosnians, but rather providing them political support when tough choices had to be made. For the Bosnians, the constitutional reform process would not be a graduate school seminar, but rather a bitter political struggle that would bare their still festering distrust and animosity.

Timing is Everything

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14. (C) The Ambassador repeated our commitment, as part of this process, to consult with party leaders to assess the political viability of the U.S.-brokered package of amendments, but he also stressed that consultations on "meshing" the U.S.-brokered package with the longer-term process would have to be carefully orchestrated. Some Bosnian leaders might use the U.S.-EU proposal as a pretext to walk away from the constitutional reform process altogether, if it involves abandoning the U.S.-brokered package. Others, particularly opponents of the U.S.-brokered package, might use the U.S.-EU proposal to claim a political victory and vindication for their previous positions, which might embolden them to press even more aggressively for their "all or nothing" approach to constitutional reform. We would have to find the right moment in the current political environment to press ahead, the Ambassador concluded.

15. (C) Though there was general agreement on this point, both the EUSR and the German Ambassador expressed their interest in holding a formal event in mid-June to announce U.S.-EU support for a longer-term constitutional reform process, including a pledge to provide technical and financial support for the process. The EC Ambassador suggested that it might be best to hold such a ceremony only once political party leaders had agreed to sign a political declaration supporting the CRC's creation. EUSR argued that a U.S.-EU event could be designed to put political pressure on the party leaders to sign such a declaration and did not need to be connected to a specific milestone in the long-term constitutional reform process. (Note: On the margins of the meeting, the German Ambassador told us that while Berlin would prefer a mid-June event, he thought Germany might ultimately be flexible about timing. End Note.)

Size Matters

¶6. (C) The German, French, and EC Ambassador also expressed concern about the size of the proposed Secretariat, which would include 10 internationals (including the two co-chairs) and 23 Bosnians. The EC Ambassador suggested that the EU and Economic Affairs Section of the Secretariat be cut in half from three to six people. At one point, the German Ambassador proposed that international technical experts fly into Bosnia "as needed" as they did when supporting the constitutional drafting process in Afghanistan. EUSR countered that outside experts his staff had consulted were surprised at how small the proposed secretariat would be. He noted that the Defense Reform Commission ultimately involved almost 120 people, stressing that the CRC's task was arguably much more complex and politically challenging. (Comment: We are agnostic about how many EU-related experts the CRC might require and would certainly not object to cuts. End Comment)

Next Steps

¶7. (C) Despite the lack of consensus on some of aspects of the Constitutional Reform Commission, EUSR plans to brief EU Heads of Mission and the Steering Board Ambassadors this week on the proposal, albeit in much less detail. He will also brief the EU Political-Security Committee in Brussels on Friday, May 11 before traveling next week to Washington. In the meantime, EUSR staff will seek "line-in, line-out" suggestions from the Germans, British, French, Italians, and European Delegation with the aim of finalizing the proposal in the next week. EUSR has suggested that U.S.-EUSR consultations with political party leaders might begin as soon as he returns from Washington (on Friday May 18), but we have signaled that we believe clear agreement on the concept paper outlining a longer-term constitutional process is necessary before we begin consulting party leaders. The EC Ambassador made a point of noting that "this briefing should not be seen as an endorsement by the Commission of the proposal."

Comment

¶8. (C) We are increasingly concerned about whether this is the right moment to push constitutional reform, whether the U.S.-brokered package or a longer-term process. It could

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further inflame inter-ethnic political tensions as well as strengthen the political hand of Bosniak member of the Tri-Presidency Haris Silajdzic, who remains the biggest obstacle to reaching political consensus on major reforms. We expect EUSR to press us to move quickly nonetheless, since he sees some sort of agreement on a long-term constitutional reform process as a legacy issue (hence the full court press on the mid-June "ceremony"). The Germans and others eager to throw him a bone before his June 30 departure may well support him. It would be useful for Washington to underscore to EUSR that while we remain committed to a US.-EU-led constitutional reform process, we must carefully consider the political consequences of trying to rush an agreement. In that context, we are skeptical about the wisdom of a mid-June "ceremony" absent a clear commitment from political leaders. We suspect this last message will have to be delivered to Berlin as well.
MCELHANEY